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DECISION



W. Haubert CivPers.
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON D.C. 20548

FILE: B-191413

DATE: May 22, 1978

MATTER OF: Patrick J. Fleming - Claim for Retroactive Compensation

DIGEST: Employee claims that work which he performed was "substantially equal" to duties of higher level position. Remedy of retroactive temporary promotion and backpay under decision in Turner-Caldwell is available only when employee is detailed to established higher level position. Performance of work "substantially equal" to higher level position does not constitute detail to such position. Since employee did not prove fact of official detail, claim is denied.

This action concerns a claim by Mr. Patrick J. Fleming against his employing agency, the Department of Energy (DOE), for a temporary retroactive promotion and backpay.

The record indicates that effective December 19, 1976, Mr. Fleming was transferred from Edina, Minnesota, to Washington, D.C., as a Compliance Specialist, grade GS-11. Although officially assigned to that position, Mr. Fleming contends that from April 6, 1977, to November 30, 1977, he performed the duties equal to those of a Project Coordinator, grade GS-12. In support of his contention, Mr. Fleming relies on a statement made in a memorandum recommending that he be promoted to the grade GS-12 position. That memorandum provides:

"In fact, he Mr. Fleming has exceeded GS-11 job requirements to such an extent that his supervisors have been able to assign him more difficult duties with greater responsibilities so that the attached higher grade position description is a more accurate reflection of what he does."

Mr. Fleming's employing agency, however, states that the claimant was never officially or unofficially detailed to a grade GS-12 position. Further, with regard to the above-quoted portion of the memorandum on which Mr. Fleming has requested relief, Mr. John Polishuk, Director for Operations, Office of Personnel Management, DOE, states:

B-191413

"While Mr. Fleming may have exceeded the normal job requirements for Compliance Specialist, GS-11, this assessment certainly does not indicate that he had exceeded the GS-11 level to the extent that he was performing at the GS-12 level. When the memorandum was typed, Mr. Fleming had been performing in his new position for approximately four months; it is expected and normal for an employee to assume more difficult duties with greater responsibilities after performing in a position for several months; however, this does not mean that the grade of the position has changed. This is particularly evident when an employee changes occupations as in the case of Mr. Fleming. Furthermore, Mr. Bianconi has informed the Personnel Office that Mr. Fleming was never officially or unofficially detailed to a GS-12 position."

Thus, the DOE concludes that Mr. Fleming was neither detailed to nor performed the duties of a grade GS-12 position.

The general rule in cases of this nature is that an employee is entitled only to the salary of the position to which he is appointed, regardless of the duties he performs. Patrick L. Peters, B-189663, November 23, 1977. Where an employee's position undergoes an accretion of duties, the proper course of action for the employee is to appeal the classification of his position to the Civil Service Commission. See 5 C.F.R. Part 511, Subpart F (1977). Unless and until the employee's position is reclassified to a higher grade and the employee is promoted to that position, he is not entitled to the higher salary. Peters, supra.

In contrast to an accretion of duties, an employee may be detailed to a higher level position. A detail is the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to regular duties at the end of the period. See Federal Personnel Manual (FPM) Bulletin 300-40, paragraph 4, May 25, 1977. Our Office has recently held that employees who are detailed to higher grade positions for more than 120 days without Civil Service Commission approval are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the

B-191413


detail until the detail is terminated. Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427 (1977). Since our decision in Turner-Caldwell applies only where the employee has been officially detailed to another established position, it does not apply where the employee's position has merely undergone an accretion of other duties. Peters, supra; James H. Marshburn, B-180144, October 20, 1974.

In the present case, the statement on which Mr. Fleming relies in support of his claim merely provides that the "higher grade position description is a more accurate reflection of what he does." That statement infers that Mr. Fleming performed higher level duties in addition to the duties of his regular position; it does not indicate that he was temporarily assigned to perform the higher level position itself. Moreover, the employing agency has denied that Mr. Fleming had been detailed to a higher level position. Finally, in his letter to this Office dated February 28, 1978, Mr. Fleming states:

"While I agree that I was not officially detailed to the position, the work which I performed was substantially equal to that of a Project Coordinator GS-12."

By his own statement, Mr. Fleming concedes that he was not officially detailed to a higher level position. Further, he does not claim that he was temporarily assigned to a specific established higher position, but rather that he performed work "substantially equal" to that of such a position. In these circumstances, Mr. Fleming has not sustained his burden of proof that he was detailed to a specific higher grade position. John R. Figard, B-181700, January 18, 1978. Thus, the general rule, that an employee is entitled only to the salary of the position he occupies, applies in this case and Mr. Fleming is not entitled to backpay.

Accordingly, the claim is denied.


Acting Comptroller General
of the United States